

SELECT COMMITTEE ON LEGISLATIVE ETHICS
Alaska State Legislature

THE ADVISOR

October 2007

Committee Members: Chair Dennis “Skip” Cook, Senator Gary Stevens, Senator Con Bunde, Representative Bob Roses, Representative Berta Gardner, H. Conner Thomas, Ann Rabinowitz, Gary J. Turner and Herman G. Walker Jr.

Alternate Legislative Members: Senator Hollis French, Senator Gary Wilken, Representative Carl Gatto and Representative Lindsey Holmes.

Staff: Joyce Anderson, Administrator; and Donna Grenier, committee staff.

QUOTE OF THE MONTH: “Knowledge is the key to ethical behavior.” Plato

2007 STANDARDS OF CONDUCT HANDBOOK

A new 2007 Standards of Conduct Handbook was delivered to each legislative office and all other offices in August. If you did not receive one, please call the Ethics Office.

Please make the following changes to your Handbook (printed July 2007):

- Appendix A (yellow section), page A-8, delete AS 24.60.037(d)
- Appendix A (yellow section), page A-16, delete AS 24.60.080(k)
- Appendix A (yellow section), page A-24, delete AS 24.60.150(b)(3) and (4)

ETHICS TRAINING

Two ethics training sessions have been conducted for legislators and staff; one on August 14 and the second on October 2. Training covered the changes to AS 24.60, Legislative Ethics Act, as a result of HB 109. No additional sessions are planned at this time. Attendees: 7 out of 20 Senators; 22 out of 40 Representatives; 244 out of 380 legislative staff.

Ethics training will be mandatory beginning in 2008 for all legislators, legislative employees and public members of the Ethics Committee. AS 24.60.150(a)(4) requires the mandatory training be conducted within 10 days of the first day of session. Ethics staff will be working with LAA Administration and leadership in the House and Senate to determine the best time to conduct the training. Notification will be sent via email and through the ethics newsletter.

***** DISCLOSURES *****

AS 24.60.105 and AS 24.60.115

The requirement to file a disclosure applies to legislators, staff to legislators, LAA staff, other legislative staff, employees of the Office of the Ombudsman, Office of Victims' Rights and Ethics Committee public members.

Remember, all disclosures are now due within 30 days of the association, matter or receipt of the certain gifts.

Keep a copy of your completed disclosure in your ethics folder in your office.

Additionally, Final Day of Service disclosures are due within 90 days after final day of service. LAA Personnel will include a letter with your final paycheck as a reminder explaining disclosure requirements.

Ethics disclosure forms are available on the ethics web site which can be accessed through the Legislature's home page or at <http://ethics.legis.state.ak.us>. Please discard all old forms.

NEW: Disclosures received by fax will be acknowledged via email within 2-5 days of receipt of the fax.

ADVISORY OPINIONS

Two advisory opinions were issued by the Ethics Committee on Friday, September 28. Below is a recap of the opinions. The actual text of the opinions is attached to this email and can also be accessed at <http://www.legis.state.ak.us/ethics/>.

ADVISORY OPINION 07-02 Limits on the use of legislative letterhead

The use of legislative letterhead to write character references, letters of recommendation, letter of congratulations, condolences and other similar forms of communication that is not campaign related does not violate the prohibition in AS 24.60.030(a) on the use of state property and funds for a nonlegislative purpose if the use falls under one of the exceptions in AS 24.60.030(a)(2).

A legislator may pay for legislative letterhead from the legislator's own funds, including funds from the legislator's "unaccountable" office allowance, for communication that does not have a legislative purpose without violating AS

24.60. A legislator may use legislative letterhead that is acquired using public funds to communicate on any matter that has a legislative purpose.

ADVISORY OPINION 07-03 Gifts from Lobbyists

AS 24.60.080 prohibits those covered by the Legislative Ethics Act from accepting a gift from a lobbyist, regardless of whether the lobbyist is a family member of the person, except for food and beverage for immediate consumption, a ticket to a pre-approved charity event or a compassionate gift approved by Legislative Council and the chair of the Ethics Committee.

Those covered by the Legislative Ethics Act may accept food and beverage that is for immediate consumption whether at the lobbyist's residence or elsewhere. Additional types of hospitality no longer apply when the gift giver is a lobbyist.

A lobbyist may not provide a service with any monetary value. Example: If the service of facilitating travel arrangements for a legislative fact-finding trip has a monetary value and the service is provided to the legislator or legislative employee, rather than to the lobbyist's employer, the legislator or legislative employee may not accept the gift of facilitating. The lobbying statute, AS 24.45.121(a)(9) prohibits a lobbyist from "facilitating" a gift "to or on behalf of a person covered by AS 24.60."

Please give the Ethics Office if you have questions.

BLACKBERRY DEVICES APPROVED

Legislative Council approved the use of Blackberry's for legislators at their August 17, 2007 meeting. The Ethics Committee met on September 28, 2007 and discussed Blackberry devices. The Ethics Committee views the Blackberry as another device to enable Legislator's to do their jobs. Blackberry devices incorporate the same technologies as computers, with internet and email access, and cell phones combined into one handheld wireless communication tool. Therefore, acceptable use guidelines for the technologies these devices possess are the same as that for such stand-alone equipment.

LEGISLATORS AND LEGISLATIVE EMPLOYEES:

For your review is a recap of the applicable Alaska statutes and approved policies for Internet/email, cell phones and calendaring.

Internet/Email

AS 24.60.030(a)(5) and AS 24.60.030(a)(2)(H) prohibits the use of a legislative email address and the Internet for election campaigning and political fund raising purposes at any time.

Computer Systems Acceptable Use Policy adopted by Legislative Council April 26, 2007

Inappropriate Use. No person shall use legislative computers and computer systems to:

1. violate any State or Federal law or regulation
2. promote any commercial venture or political campaign
3. raise funds or engage in public relations activities that are not directly related to state business
4. intentionally disrupt network or system use by others, either by introducing worms, viruses, Trojans or by other means
5. misrepresent oneself, a state agency, the Legislature, a Legislator, a state employee, or the State (including unauthorized use of another's password or login code)
6. transmit or, with foreknowledge, receive obscene materials
7. download, execute or install desktop PC software from the Internet, or from any other form of media (including diskettes, USB pen drives, CD_ROM, zip discs, and zip drives)
8. download or store MP3, WAV, or another format of music files not specifically related to Legislative duties on network disk drives as well as local computer hard drives
9. download email from accounts outside the Legislative email system. Users will not configure their email clients to allow downloading of email or attachments, which avoid existing email antivirus systems.

If a legislator or legislative employee violates the above guidelines and misuses the person's state-provided access to the Internet, the misuse may result in the person losing the Internet access and may constitute a violation of the Legislative Standards of Conduct established under AS 24.60.

Cell Phone

AS 24.60.030(a)(2)(A) allows limited use of state property and resources for a personal purpose if the use does not interfere with the performance of public duties and either the cost or value related to the use is nominal or the legislator or legislative employee reimburses the state for the cost of the use.

In other words, as long as personal use of the cell phone does not result in additional charges to the state, personal use would be appropriate.

In the near future there could possibly be tax consequences for personal use of business Cell phones, which would include Blackberry type devices.

Calendaring

The Legislative Ethics Committee has issued advice indicating legislators may include on their legislative calendar all appointments, regardless of whether the appointment is for personal or campaign reasons.

A legislative employee may "only" record the non-legislative appointments on the calendar and is prohibited from making or setting up these appointments.

SPECIAL SESSION ISSUES

FUNDRAISING FOR POLITICAL CAMPAIGNS DURING SPECIAL SESSION -- AS 24.60.031

A legislator or legislative employee may not request or accept a contribution, or a promise to make a contribution, for any state legislative campaign while the legislature is in special session.

This statute also prohibits legislators or legislative employees from raising funds for other legislative candidates.

A legislator or legislative employee on behalf of another may not accept money from a fundraising event held during special session if a substantial purpose of the event was to raise money for the legislator's campaign or for state legislative political purposes.

May a legislator *expend* campaign funds, during a special session, that were legitimately raised?

Yes, this activity would not be a violation of AS 24.60.031.

May a legislator *mail*, during the special session, an invitation to a fundraiser for his/her campaign, which would be held after the special session?

No, this would be considered a solicitation during the special session and is prohibited.

May a legislator or legislative employee host a fundraiser during the special session for a non-incumbent candidate for a legislative seat?

No. The prohibition extends to *any* state legislative campaign.

May a legislator keep a campaign contribution that was received prior to the special session but not opened and acknowledged until after the special session began?

No. The committee has determined that a contribution in the form of a check or cash is "accepted" when the legislator, or someone the legislator has given authority to deal with contributions, has physically received the contribution, knows that it is a contribution and has decided to keep it rather than return it. (Note: The best plan of action would be to not open any mail during a special session that is sent to a campaign office in the event it is a campaign contribution.)

CLOSE ECONOMIC ASSOCIATIONS DURING SPECIAL SESSION – AS 24.60.070

The ethics office has had quite a few inquiries concerning the filing of a “close economic association” (CEA) disclosure regarding housing for the upcoming special session. The following Q&A’s should be helpful in determining whether a CEA disclosure is required. All CEA’s are due within 30 days of the association.

Disclosure is required if the association is with:

- a supervisor
- a legislator
- a public official defined in AS 39.50 (all elected officials and other individuals who must file a financial disclosure with APOC)
- a registered lobbyist
- a legislative employee when the person disclosing is a legislator

If a legislator or legislative employee shares housing expenses with a person in one of the categories listed above, is a CEA disclosure required?

Yes.

If a legislator or legislative employee stays with a friend at their residence during the special session, is a CEA disclosure required?

If the friend does not fall within any of the categories above, no CEA disclosure is required. Under the gift statute, AS 24.60.080, staying at the residence of friend (as defined in this question) with incidental transportation is not considered a gift.

May a legislator or legislative employee stay at the residence of a registered lobbyist?

Yes, with the following qualification. Since a gift of hospitality (i.e., staying at a residence) may not be accepted from a lobbyist, the legislator or legislative employee must pay to stay at the residence. To determine a cost for staying at a lobbyist’s residence consider: the cost of a night’s lodging or week’s lodging in Juneau if the stay is short term or the cost per month to rent space similar in size and amenities if the stay is long term. CEA disclosure required.

May a legislator or legislative employee rent an apartment, house, condo, etc. with a lobbyist?

Yes, with the following qualification. A legislator or legislative employee must pay their fair share of the rental cost for the unit and any other costs associated with the rental. CEA disclosure required.

FREQUENTLY ASKED QUESTIONS

May a legislative employee who has had a serious accident accept gifts of donated leave-time in excess of \$250 per person?

Yes. Medical leave is separately referenced in statute, AS 39.20.245(b). This type of leave can only be used for medical/health reasons and the donor's name is kept confidential. The leave cannot be used for non-medical purposes nor can it be turned in for money. Donated medical leave does not fall within the definition of a gift in the ethics code and is therefore not subject to the \$250 cap or disclosure requirements.

Under the new statute, AS 24.60.175 Compassionate Gift, does a gift of flowers or a flag from a Veteran's organization require approval by Legislative Council and the chair of the Ethics Committee prior to acceptance by a legislator or legislative employee?

No. Incidental gifts such as flowers and flags do not meet the definition of a "thing of value" in AS 24.60.990. A "thing of value" must be considered to be a material advantage, of material worth, use or service. Therefore, incidental gifts of flowers and flags and similar items do not fall under the "compassionate gift" requirement of pre-approval and the value of these type of gifts are not included in the \$250 gift limit.

Who is the proper person to call when a constituent asks for help with a matter before a state department, a division of a state department, or a board or commission?

Under AS 24.60.030(i), a legislator or legislative employee may not contact the decision maker in a matter that has progressed to the hearing stage. Each agency has different steps prior to reaching the level of a hearing, i.e., an adjudicatory matter. It may be difficult to determine from a constituent whether the matter of concern has reached the stage of an administrative decision maker. Care should be taken to avoid contacting any person or entity that has the authority to make a final decision. It may be prudent to make call to the agency administering the matter and ask for clarification prior to taking any action in order to avoid inadvertently contacting a decision maker.

An administrative decision maker in an adjudicatory matter may include, but not be limited to, an administrative law judge, a hearing officer, the commissioner of a department, a division director, or an individual or board member of a state board or commission with adjudicatory authority.

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